SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 10 1970
JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

October Term, 1969

No. 1374

MARTIN A. BEATTY,

Petitioner,

vs.

RANDOLPH K. ELLINGS, CITY OF WINONA, HOUSING AND REDEVELOPMENT AUTHORITY OF WINONA, GEORGE M. ROBERTSON, JR., JAMES BRONK, MARLOWE BROWN, JAMES McCABE, HAROLD BRIESATH, DANIEL BAMBENEK, HENRY V. PARKS, MURIEL OLLOM, JIM D. MOHAN, HAROLD THIEWES, JAMES V. STOLTMAN, NEIL SAWYER, BARRY NELSON, DAVID L. JOHNSTON, DONALD KLAGGE, JERRY BORZYSKOWSKI, ALLYN S. MORGAN, JR., L. W. GOLDBERG, N. J. FISCHER, JOSEPH E. KRIER, WM. J. THUROW, FRANK CUNNINGHAM, WM. O. FINKELNBURG, E. J. SIEVERS, PHILIP BAUMANN, JAMES T. SCHAIN, NORMAN E. INDALL, WM. F. WHITE, JAMES FOSTER, JERRY PAPENFUSS, FRANK G. MERTES, DONALD GRAY, HOWARD KELLER, REPUBLICAN HERALD PUBLISHING COMPANY, JAMES B. GOETZ, RADIO STATION KAGE, GEM RADIO STATIONS CO., JAMES B. GOETZ, MERLIN J. MEYTHALER and REX N. EYLER, co-partners, doing business as WINONA BROADCASTING CO., KWNO BROADCASTING CO., CHAMBER OF COMMERCE OF WINONA, DONALD STONE, and ARNOLD STOA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR REHEARING

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1970—Northwest Brief Printing Co., 322 S. Fourth St., Minneapolis 55415 338-5078

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PETITION FOR REHEARING

The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on May 18, 1970, and (2) granting the petition. As grounds for this motion petitioner states as follows:

I.

The federal question of "public figure" affords reasons why review should be granted as hereinafter listed.

a. On the authority of *Pickett v. Union Terminal Co.*, 313 U.S. 591, 314 U.S. 704, 315 U.S. 386, 394, and *Forgett v. United States*, 383 U.S. 926, 390 U.S. 203, because of the

fact that the same or related issue or issues are before the Court in the following cases pending, to-wit:

Rosenbloom v. Metromedia, #947. Review granted.
Monitor Patriot Co. v. Roy, #891. Review granted.
Time Inc. v. Pape, #1309. Review granted.
Osceola Star Banner v. Damron, #1373. Review granted.

Let us consider initially the first three cases already chosen for review. The contrasting situations of a non-"public figure" in *Rosenbloom*, a candidate for U. S. Senator in *Monitor Patriot Co.*, and a ranking police officer in *Time Inc. v. Pape* are before the Court in regard to the proper application of the *New York Times Co. v. Sullivan* rule.

While these cases present conflicting applications of the rule in two state court and two federal court cases, none of the three present to the Court the opportunity to draw the line between a "public figure" and a non-"public figure." See petitioner's Supplemental Brief, pages 13 through 20, demonstrating the invalidity of the grounds advanced to support the "public figure" label. The case at bar squarely presents this issue, petitioner having consistently insisted that he is not a "public figure." Consequently the case at bar in this respect presents an issue both of more importance to the public at large and more complex than the three cases combined. Unlike the three cases, the case at bar was never considered by a jury, being determined by Summary Judgment; and petitioner was held to be, improperly he contends, a "public figure" as a matter of law.

Even for these very limited reasons the denial of certiorari should be reconsidered so that this case may be argued along with *Rosenbloom*, *Monitor Patriot Co.*, and *Times Inc. v. Pape*.

Also of importance to the public at large, and the Courts, are questions regarding the application of the Sullivan Rule

when the alleged defamations are by public officials at meetings of the public bodies; and also alleged defamatory publications by news media allegedly aligned conspiratorially with the public officials. All of these problems are to be found in the case at bar, but not in the pending cases referred to above.

b. The intervening and controlling Supreme Court decision of *Greenbelt Cooperative Publishing Co. v. Breseler* requires a rehearing of the case at bar, on the authority of *Zap v. United States,* 330 U.S. 800, and *Bradley Mining Co. v. Boice,* 345 U.S. 932.

The case concerns the publications in the local press, apparently as news, the charge of "blackmailer" levelled by members of the audience at two City Council meetings. It was conceded by his counsel that Mr. Breseler, a State Senator, at whom the remark was directed, was a "public figure." The Court found the word to be "no more than hyperbole, a vigorous epithet."

The circumstances of the case are in sharp contrast to the case at bar where the Chairman of the local Housing Authority, also a respondent, publicly read the alleged libel at a Housing Authority meeting. It was a prepared, sixteen paragraph typed statement naming petitioner exclusively and eleven times. It was published by respondent newspaper company, and other media, the day following. (Ex. B to Separate Answer of Respondent Housing and Redevelopment Authority. See Appellant's Brief and Appendix before Minn. Supreme Court, A-25.)

The respondent newspaper company had been forewarned of the advisability of avoiding libelous publications about petitioner by a demand for retraction of a prior alleged libel. (Complaint, par. 18, Appellant's Brief and Appendix before Minn. Supreme Court, A-8.)

The spontaneity of the alleged slanderous word "blackmailer" in *Greenbelt* is in contrast with the pre-planned and type statement in the case at bar. The area of contrast ought to be examined by the Court.

Another point of contrast is that in *Greenbelt* the individual name-caller was not sued; while in the case at bar both the public official, the alleged libeller, (see *Sorenson v. Wood*, 123 Neb. 348, 243 N.W. 82), and the newspaper company were sued. The question arises: Are the public officials also enveloped within the protection of the press freedom cloak? By its decision in the case at bar the Minnesota Court has, in effect, applied the Sullivan Rule to public officials also in regard to both premeditated and spontaneous allegedly defamatory remarks.

Also Breseler, who was called "blackmailer," was before the City Council "again seeking such favors," as the Court puts it, in the form of zoning variances. Conversely, in the case at bar, the petitioner's appearances at the City Council meetings have been in the interest of preserving his fundamental rights.

II.

The need for the resolution of an asserted constitutional right of the Citizen in relation to the secret meetings of the local public bodies is the compelling reason for granting a rehearing.

More fundamental than the "public figure" and libel considerations, already set forth, are the reasons why the Court should hear the arguments for and against petitioner's position that the Citizen has a federal right, not dependent upon the common law, but protected by the federal Constitution, to attend all the meetings of the local public bodies, and particularly those held secretly such as "executive sessions."

Initially it should be stated that the judicial recognition

of a *people's* "right to know," apparently never adjudicated in this Court, will necessarily flow from the Court's consideration and resolution of this case.

This asserted right, although glimpsed by text writers, has been rather lost in the sometimes asserted "right of the *press* to know."

Even such asserted right of the press to know has caught but passing comment in the great mass of litigation concerning the right of the press to publish and comment.

It appears more practical to proceed inversely to demonstrate "the people's right to know," as follows:

(1) There is a right to gather news.

> "The right to report is of course dependent upon the ability to gather news. Obviously, the United States Constitution does not give one the specific right to collect news; however, there is no prohibition; * * * the right to gather and report news, so vital to the press, is granted inferentially." Thayer, *Legal Control of the Press*, 3rd Ed., The Foundation Press, Sec. 30, p. 178.
>
> "The freedom to publish news and comment is of little value without the corollary right to gather the news." Swindler, *Problems of Law in Journalism*, 1955, The MacMillan Co., Ch. III, p. 77.

(2) Freedom of the press belongs to the people.

> "Freedom of the press is a right which belongs to the public; it is not the private preserve of those who possess implements of publishing." *State v. Buchanan* (Or. 1968), 436 P.2d 729, Hd. nt. #2, cert. den. 88 S.Ct. 2055, 392 U.S. 905, 20 L.Ed.2d 1363. See also: *State ex rel. Pulitzer Pub. Co. v. Coleman* (1941), 152 S.W.2d 640, 370 Mo. 1239.

(3) It follows that freedom to gather facts belongs to the people.

> "Legally, the rights not granted to the Federal Government are reserved to the states or to the people, and so the right to gather news remains with the people."

Thayer, *Legal Control of the Press*, 1956, 3rd ed., The Foundation Press, Sec. 30, p. 178.

"Recently Sec. 3 of the Administrative Procedure Act of 1964, 5 U.S.C.A., Sec. 1002, was amended and The Freedom of Information Act, 5 U.S.C.A., Sec. 522 (1967), was enacted. Here the focus is not on access for opinion but on *access for information*. The latter, like the former, may someday be *predicated on a positive constitutional duty* of government." (Emphasis added.) Gillmor and Barron, *Mass Communication*, 1969, West Pub. Co., Ch. V, Sec. 1, p. 453.

Because this case turns upon the fundamental basis of freedom of speech, its determination affects all Citizens, and the states and local bodies as well. The following questions themselves demonstrate the compelling necessity why they should be answered by the Court, to-wit:

1. Is there a constitutional "right to know" retained in the people and guaranteed by constitutional amendments, and particularly Amendment IX?

2. Is a people's "right to know" a power reserved in the people by constitutional amendments, and particularly by Amendment X?

3. Is there instead a superior "power of secrecy from public scrutiny" of the public's business reserved by the several states for the municipal bodies by Amendment X?

4. Is the "people's right to know" unconstitutionally violated by the device of "executive sessions" or any other scheme whereby members of the local public bodies discuss in secret the public's business?

It would appear to be of no moment whether the right, assuming its existence, is protected by the 1st, 9th or 10th Amendments. (See: *Brecu v. Kahl, et al.*, 7 Cir., 419 F.2d 1034, 1036, cert. den. 6/2/70, 38 L.W. 3474.)

The present awareness of civil rights by the Courts, the legislatures, the people and the press demonstrate the time-

liness of a judicial consideration of these issues by our highest Court now. Florida's recently enacted "Government in the Sunshine Law," (Fla. Stats. Anno., Sec. 165.22), and similar statutes of some other states, demonstrate current legislative attempts to clarify a "people's right to know." The Freedom of Information Act, 5 U.S.C.A. Sec. 522 (1967), shows the same awareness by the Congress, as does the currently proposed "First Amendment Freedoms Act."

A Florida Court has recently exposed this raw nerve with these observations:

> "Terms such as managed news, secret meetings, closed records, executive sessions, and study sessions have become synonymous with 'hanky panky' in the minds of public spirited citizens. * * * these specified boards and commissions should not be allowed to deprive the public of this inalienable right to be present * * *." (*Board of Public Instruction of Broward Co. v. Doran*, 224 So.2d 693, 699 (Fla. 1969).)

There is current speculation, too, that by the Freedom of Information Act the Congress has sought to limit, rather than recognize, the "right to know" inherent in the people.

Today, when it is recognized that we move ever faster into regimentation, the definitive resolution of the people's rights cry for recognition.

The sad story of Black Americans is lesson enough that the individual states are not to be trusted to fairly resolve a conflict between the state's own delegated or reserved power and the constitutionally reserved rights of the citizen.

Finally, the Courts ought to foster the orderly judicial demarcation of citizens' inherent rights, where possible, BEFORE such issues reach the streets.

Fortuitously, the case at bar affords the present opportunity to determine whether the federal Constitution has reserved such a right as a limitation upon the power of the several states. Petitioner suggests that there is no single

issue of such elemental importance, both currently and permanently, in any other case now pending.

For the reasons set forth above, as well as those contained in the petition for writ of certiorari and petitioner's supplementary brief, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and, if the Court is so disposed, set the cause for argument in conjunction with one or more of the pending cases numbered #947, #891 and #1309; and further that the judgment and opinion below be reviewed.

Respectfully submitted,

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As petitioner, pro se, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

Petitioner, pro se